

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRADESHIFT, INC.,
Plaintiff,

v.

BUYERQUEST, INC.,
Defendant.

Case No. 20-cv-01294-RS (TSH)

DISCOVERY ORDER

Re: Dkt. No. 71

Defendant BuyerQuest moves to compel the deposition of Plaintiff Tradeshift's CEO, Christian Lanng, which Tradeshift opposes, citing the apex doctrine. ECF No. 71.

It's undisputed that Lanng is an apex witness; he is the CEO, after all. The parties disagree on whether his personal involvement in the events at issue is enough to justify a deposition. BuyerQuest's showing of Lanng's involvement consists of the following three assertions:

- He attended and presented at pre-contracting sales pitches made to Smucker. Smucker has since sued Tradeshift for fraudulent inducement related to the Tradeshift/Smucker Agreement and based, in part, on those presentations.

- Tradeshift failed to timely pay BuyerQuest as required by the Tradeshift/BuyerQuest Agreement. Mr. Lanng participated in decisions about whether and when to pay BuyerQuest and BuyerQuest's complaints about nonpayment were escalated to him.

- In November 2019, Mr. Lanng and Smucker's CFO spoke directly via phone and Mr. Lanng reassured Smucker about Tradeshift's financial stability in an

1 attempt to convince Smucker to continue with the Tradeshift/Smucker Agreement.

2 No one else participated in that call. Mr. Lanng attended at least one other in-
3 person meeting with Smucker and BuyerQuest in October 2019 to discuss problems
4 with the project.

5 The first bullet point has essentially nothing to do with this case, as Smucker's fraud
6 claims are asserted in a different lawsuit pending in New York. The second bullet point is relevant
7 to this lawsuit because it relates to the parties' performance of the contract Tradeshift alleges
8 BuyerQuest breached. And the third bullet is directly relevant to this case. Having established
9 that Lanng had at least some direct involvement in relevant events, BuyerQuest is entitled to take
10 his deposition. The apex doctrine is intended to shield executives from harassing depositions
11 concerning events they did not participate in and whose knowledge about them derives only from
12 what others reported to them. It is not intended to shield important witnesses from being
13 examined about things they did. The Court does not accept Tradeshift's argument that if Lanng
14 was at a meeting and another Tradeshift employee was at the meeting, then his knowledge of that
15 meeting is duplicative. Witnesses can remember things differently, and they are especially likely
16 to if they had different roles at the meeting.

17 Still, a phone call, a meeting, and some discussions about paying BuyerQuest are thin gruel
18 for a seven-hour deposition of a CEO of a global company that has hundreds of employees.
19 Discovery closes in three weeks, *see* ECF No. 60,¹ so this limited showing of relevance is
20 probably as good as it is ever going to get. The Court will allow BuyerQuest to depose Lanng for
21 3.5 hours of record time; a full day isn't warranted under the apex doctrine given the limited
22 showing of Lanng's involvement. The Court rejects Tradeshift's request to narrowly limit the
23 specific subjects that BuyerQuest can question Lanng about. As with any deposition, BuyerQuest
24 can ask him about issues relevant to the case; it sometimes happens that a witness knows more or
25 was more involved than the questioning attorney would have guessed from the documents or from
26 what other deponents have said.

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¹ Accordingly, the Court rejects Tradeshift's argument that this deposition is premature.

Accordingly, BuyerQuest's motion to compel is granted in part as stated above.

IT IS SO ORDERED.

Dated: April 9, 2021

A handwritten signature in black ink, appearing to read "Tom. Hix", written over a horizontal line.

THOMAS S. HIXSON
United States Magistrate Judge